SBCivil Writ Petition No.5595/2006

Jai Singh
Vs.
State of Rajasthan & Ors.

Date of Order :: 9th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rakesh Arora, for the petitioner.

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Under an order dated 28.12.1993 the petitioner was promoted as Driver Gr.II w.e.f. 15.11.1981. By the same order one Shri Chhotu Singh was also promoted as Driver Gr.II w.e.f. 15.11.1981. The Assistant Engineer, Public Works Department (Mechanical) Sub Division-I, Jodhpur by an order dated 25.6.1994 withdrew the order dated 28.12.1993 whereby promotion was given to the petitioner as well as Shri Chhotu Singh. The order dated 25.6.1994 was passed in compliance of an order dated 30.4.1994 passed by Additional Chief Engineer. The petitioner and aforesaid Shri Chhotu Singh being aggrieved by the order dated 25.6.1994 preferred separate writ petitions before this Court, those came to be dismissed by a common judgment dated 18.2.1999. Being aggrieved by the judgment dated 18.2.1999 the petitioner as well as Shri Chhotu Singh preferred special appeals before Division Bench of this Court. The appeal preferred by the petitioner was dismissed by Division Bench of this Court being withdrawn with liberty to challenge the order dated 30.4.1994 in

pursuant to that the order dated 25.6.1994 was passed. The petitioner after withdrawal of special appeal preferred a writ petition before this Court but that was dismissed on the count that the petitioner failed to avail alternative remedy provided under the Rajasthan Civil Services (Service Matters) Appellate Tribunal Act, 1976, the petitioner, therefore, filed an appeal before the Rajasthan Civil Services Appellate Tribunal that came to be rejected by judgment dated 23.6.2006 on the count that the cause sought to be agitated was subject matter of the writ petition preferred before High Court and that was rejected by the judgment dated 18.2.1999. In light of the judgment aforesaid it was not open for the Tribunal, to adjudicate the matter again on merits.

The contention of counsel for the petitioner is that the judgment dated 18.2.1999 has already set aside by Division Bench of this Court in the case of Shri Chhotu Singh (DBCivil Special Appeal No.1383/99) and, therefore, learned tribunal erred while rejecting the writ petition preferred by the petitioner on the count that the judgment dated 18.2.1999 covers the controversy.

Heard counsel for the petitioner.

It is true that Division Bench of this Court by judgment dated 20.2.2001 while accepting the appeal

preferred by Shri Chhotu Singh (DBCivil Special Appeal No.1383/99) set aside the judgment dated 18.2.1999 and also quashed the order dated 25.6.1994 whereby Shri Chhotu Singh and the petitioner both were reverted to their original posts by withdrawing the order of promotion to the post of Driver Gr.II, however, by acceptance of special appeal preferred by Shri Chhotu Singh it cannot be said that the judgment dated 18.2.1999 lost its sanctity qua the petitioner also. As a matter of fact the petitioner withdrew his appeal giving challenge to the judgment dated 18.2.1999 and, therefore, that judgment acquired finality qua him, the tribunal, therefore, was having no option but to dismiss the appeal preferred by the petitioner giving challenge to the order cancelling his promotion. The tribunal was having no authority to travel against the judgment passed by this Court in the case of the petitioner himself.

In view of it, I do not find any error in the judgment passed by the Rajasthan Civil Services Appellate Tribunal on 23.6.2006. While holding that the tribunal has not committed any error, this Court is certainly required to look into startling fact that the petitioner as well as Shri Chhotu Singh both were promoted as Driver Gr.II by a same order and for all purposes their cause is identical. It was unfortunate for the petitioner that he choose to withdrew the special appeal preferred by him giving challenge to

the judgment dated 18.2.1999 that ultimately came to be reversed by Division Bench. The withdrawal of the appeal does not mean that the petitioner left his cause to challenge the order dated 25.6.1994 as he was continued with the litigation against the order aforesaid. If this Court permit the respondents to continue Shri Chhotu Singh on the promoted post while accepting the order dated 25.6.1994 as a valid order qua the petitioner then the same shall be nothing but a conscious discrimination among similarly situated persons due to an error in choosing the course to challenge to an illegal order.

In view of it I am of the considered opinion that the respondents are required to consider the case of the petitioner at par with the case of Shri Chhotu Singh.

Accordingly, this petition for writ is disposed of with a direction to the respondents that if the petitioner submits a representation to consider his case at par with Shri Chhotu Singh then the respondents shall consider and decide the same by keeping in mind the verdict of this Court given in the case of Shri Chhotu Singh (DBCivil Special Appeal No.1383/99) vide the judgment dated 20.2.2001.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.